1: Coon E-5 (1926-1927) 1931 MX3 Rif MX3

CHAPTER X

JUDICIAL AND CLERICAL OFFICERS; LAWS GOVERNING INHERITANCE

THERE are in the Rif two classes of officials who concern themselves with judicial and clerical functions: the "clerk," or *adl* (plural *adul*[1]), and the "judge," or *kedhi*. The former is something between a town clerk and minor judge, and the latter a supreme court of appeal. Both concern themselves only with civil, never with criminal, disputes.

The clerk is a former student who specialized in the cantonal mosque in the study of law, rather than in the usual study of magic and religion: some clerks, however, indulge in magical practices on the side as an additional source of income. The clerk takes pains to keep this second profession secret, lest he be expelled from office. Most clerks spend longer than the average period at study, and attend several different mosques in the course of their preparation.

There is at least one clerk in every *bone*. Any person who is qualified by his training may set up as a clerk, but must receive the consensus of local approval before he is entrusted with enough business to make this occupation profitable. A clerk must be dignified and pious.

The clerk is often the schoolmaster of the *bone* as well. In smaller *bones* it is usually an economic necessity for one man to fulfill these two offices, consequently the terms "schoolmaster" and "clerk" have become somewhat confused. A clerk is often called schoolmaster, but a schoolmaster who is not a clerk is never called clerk.

The duties of the clerk include writing and reading letters for illiterate persons, settling controversies as to ownership of property, making out and administering wills, and drawing up documents of sale for landed property and documents of marriage and divorce. He is also called upon to slaughter animals upon ceremonial occasions.

In making out a document of marriage, the clerk writes out the names of the bride and groom, and the amount paid for the bride. He gives the paper to the bride and makes a duplicate, which he keeps. His signature renders the document valid. He similarly makes out divorce papers, which he gives to the woman, who can thus prove that she is no longer under obligation to her husband.

When the clerk makes out the document for a land sale, he takes the old document from the seller, and gives both old and new papers to the purchaser. Each time a piece of land changes hands a new paper is made out, and the present owner has in his possession all of the extant bills of sale for that piece of land. When a piece is subdivided the heir of the owner of the original piece at the time of its subdivision keeps the papers recording transfers prior to this subdivision.

When a man wishes to sell some of the land which has been in his family since time immemorial, and for which there is no paper, he informs the clerk, who advertises for any other claim to this land, either written or oral, and finding none makes a bill of sale.

[1] The usual Arab notary.

1: Coon E-5 (1926-1927) 1931 MX3 Rif MX3

actual owners of the machine are allowed to do so; and he collects from them the customary divisions of the oil which they squeeze. The village council of each *bone* makes out the list and the clerk writes it down and sees that it is followed.

Another duty of this latter official is making out papers of adoption for strangers who come into the *bone* to live and who wish to become affiliated with it.

The clerk also has charge of wills and inheritance. The head of each family may make a will on his deathbed, or at some time when he fears imminent death. To do this he summons the clerk, who writes down the terms of the bequests and takes the paper away with him. After the man has died he produces this paper, makes its contents public, and administers the estate.

Although most men, in making their wills, follow the traditional rules of inheritance, some bequeath their property unequally among their heirs, at times cutting individuals off entirely, and leave property to mosques or saints' tombs. No man is permitted, however, to disinherit his wife or wives.

In each tribe there is supposed to be a judge, appointed by the tribal council, and holding his office for life or good behavior. He has received a diploma from one of the four institutions previously mentioned. His appointment does not usually come, however, until long after his fulfilment of the requirements for this position. He is almost always a native of the tribe in which he is employed.

There was one in Beni Urriaghel, one in Beni Tuzin, and one in Gzennaya, at the time the Christians entered. The first judge in the Rif in modern times was Si Abd el Rahman of the Beni Yunes of the Gzennaya, who had dwelt long in Fez and married a Fezzi wife. The Gzennaya and Beni Urriaghel decided, about fifty years ago, that they would like to have a judge, and therefore sent men of the Gzennaya to Fez to persuade Si Abd el Rahman to come. On the way back from Fez, the Beni Ulid, who did not know that he was a judge, attacked him and his bodyguard in the night, killing him and capturing his wife and children. What remained of the bodyguard returned to the Rif and called together a great council of the tribes of Gzennaya, Beni Urriaghel, Temsaman, Beni Tuzin, Beni Amart, Beni Ulishk, Beni Said, and Metalsa. All these councillors, with their retainers, invaded Beni Ulid and devastated it, taking back the prisoners and loot, and exacting a fine of four thousand five hundred dollars.

Si Abd el Rahman's eldest son was made judge in his place, after him his brother, and after his brother his sons, in turn. Beni Urriaghel and Beni Tuzin later each established a judge, certified by that of Beni Yunes. Several others were set up and deposed in later times.

Every year each *fifth* presents the judge with a cow, five or six goats, and large quantities of all staple agricultural products. The judge in this way receives a large income, but is expected to spend most or all of it on hospitality. He settles disputes concerning landed property. Contestants bring their papers of ownership to him, and he decides which one really owns the property, then signs and seals the paper of the winner. The plaintiffs bring him presents of meat and sugar — any further gift would be considered bribery.

In the Senhaja Sghir the Sherif of Targuist acts as judge, except in Taghzuth, where there has been a judge for generations. Until the time of Abd el Krim, however, the judge of Taghzuth was influenced by the Sherif of Targuist.

671 It may also be seen that here there appear no Arabic names of tribal functionaries, such as qa'id, qadi or mqaddim.

[693] The notaries who sign the documents limit themselves, then, to the registry of acts passed by the lay committee or customary tribunal.[27]

000 This procedure clarifies the executive procedure in notes 5, 6, 7 and 8.

627 613 The notables and a coterie of friends, family or volunteers, or, simply, hungry men, fall like locusts upon the households of the lineage-mates (agnates) of the accused, and they do not budge until the matter is settled; either this, or they throw them out of doors.[28] Documents and lands, proofs and possessions; the accused's agnates must hand over all of these, as well as their very houses. They have violated the pact and the pledged word. They can only save their own [628] persons, and this with difficulty, thanks to the force of vengeance, bloodfeud and reprisal, to the raqba[29], which may be taken by any member of the victim's family (i.e. any of the victim's agnates).

627 It is a rapid procedure, but not because the law or its executive organs are rapid, for, as among Europeans, as it is their own flesh which suffers, they are in no great hurry. In the Rif, the man who most strongly urges liquidation of these affairs is the one responsible for the crime, and his agnates. However, much beforehand accounts may be adjusted, the matter is over before they will see themselves free of the locusts in their quarters and before they will be able to save bread. After a few days, which are hard to stretch out, the provisions, already considerably reduced, will begin to get

4. QANUN OF THE JAMA'A OF IMHAWLEN[31] (AITH WARYAGHAR):

A) Qanun:

692 621 614 [695] Praise be to God. Those of the jama'a of Imhawlen appeared for judgment in front of both the undersigned notaries, and presented themselves to us: al-Hajj Shu'aib; Muhammad bin Muhammad bin Misa'ud and his brother Muhammadi; Qaddur bin ask-Shaikh Muhammad bin 'Abd as-Salam and his brother Muhammad; al-Muqaddam Muhammadi bin Muhammad bin Ahmad and his brother 'Allush; 'Abdallah bin al-Hasan; Muhammad bin 'Azzuz; Hammu bin Muhammad bin 'Ali and his uncle Shu'aib bin Shu'aib; Muhammad bin Muhammad bin Muhammad bin Musa; Muhammad bin Muhammad bin Ahmad bin al-Hasan; Muhammadi Amzzyan; Awlad al-Muqaddam Shu'aib bin Muhammad bin Shu'aib and their brother Hammu; Muhammadi bin al-Muqaddam and his brother 'Umar[83A]; and their brother Hammu.

621 692 673 All these persons are of the jama'a of Imhawlen, and all appeared for judgment (at the present act), agreeing in behalf of what is good and advantageous to the making of the agreement, with respect to the hannash (evil doers; also snake charmers), to robberies and all acts of lowliness and ignominy (Blanco: note a).

685 687 In case any thief or smuggler should be caught in flagrante delicto, he must pay 10 mithqals in money (Blanco: note b).

695 Regarding the above, the interested parties testified. The Murabit Si Muhammad Dardushi and the Murabit Muhammad bin 'Abd al-Qadir

784 al-'Azizi attended the present act with them. Whoever changes or alters this agreement must answer to God, who shall decree his punishment. Those who commit misdeeds (on earth) shall know the change in the other life (Blanco: note c).

A, [A "83" apparently does not refer to any footnote here and therefore should be disregarded--Analyst]

574 (perhaps to deliver their portion of the expenses necessary to maintain
689 the guest), and in case one of them is opposed to going, he shall be fined a goat or one duro.

695 (Blanco: paragraph f) Valid and complete testimony. Whoever
784 should change or alter this agreement shall answer to God. Both the
693 undersigned notaries know, personally and by name, all the parties who effected the present agreement.

685 (Blanco: paragraph g) In case anyone should open a pond or an
312 irrigation ditch (thus letting out the water), he shall be fined one duro for the pond and one mithqal for the irrigation ditch.

686 (Blanco: paragraph h) Regarding the contract with the schoolmaster, if anyone should be opposed (to contributing his share to the scholmaster's annual ration of barley), he shall be fined 10 uqiyyas.

689 (Blanco: paragraph i) If those mentioned earlier in the present agreement should assemble and agree on some useful matter, and if in this case there should be anyone (of the members of the abovementioned jama'a) who is opposed (to carrying it out), he shall be fined one duro.

622 (Blanco: paragraph j) Their shaikh is 'Ali bin Muhammad bin 'Azzuz. Everything that he orders (literally, "says") must be done
693 (literally, "will be"). The parties attending know the value of the present agreement, and in virtue of this, both the undersigned notaries bear witness that they are in a perfect state of legal capacity (i.e. of sound minds and memories) (in order to be able to effect the present
805 agreement) and that they know them. On the first (day) of Safar al-Khair of the year 1285 (May 24, 1868).

000 The slave of God--may He be glorified--Muhammad al-Khattabi and 'Umar bin Muhammad, etc.

682 limits of his land (i.e. within the limits of the clan territory of the Bani 'Abdallah) shall pay (a fine of) 2000 duros; (this shall be the fine) if he committed the deed alone; but if several (men) committed it, each one (shall pay a fine of) 2000 duros. Whoever should take
687 683 justice into his own hands (literally, "ransacking to collect a debt") shall pay 50 duros, and the same for whoever should attack another on
689 the path. Whoever should provoke an incident in the market (shall pay) 10 duros.

683 (Blanco: note d) Whoever should unsheath a dagger, making it glitter, with intent to attack (literally, "injure"), shall pay 5 duros. Whoever should wound the head of another with stones (shall pay) 5 duros. Whoever should attack another with a stick, causing blood to flow and provoking a scandal, (shall pay) 15 duros, and if he should not cause blood to flow, (he shall pay) 10 duros.

613 (Blanco: note e) Whoever should come to the defense of one of
681 his brothers (i.e. agnates) or of any other person, as is customary among those of the same party (i.e. same lineage), (shall pay) 5 duros.

681 (Blanco: note f) No request (for pardon) shall be listened to, nor shall mercy be granted to any of those who have incurred the above (punishments).

805 (Blanco: note g) For the application of what has been made
443 manifest above, it shall be considered that Tuesday begins at dawn and ends with the sunset; this is to apply to them (those of the Bani 'Abdallah) and for strangers (regarding the application of the above), market (day) shall be considered as having a duration of three days.

695 With regard to the above, the testimony (which both 'udul)
693 registered took place, the witnesses being in a perfect state of legal

695 693 capacity (i.e. of sound mind and memory) in order to testify.

(Blanco: note h) If, regarding a murder, there is brought sufficient proof (against the guilty party), the abovementioned fine shall be imposed upon him, and in case sufficient proof does not exist, he shall swear (for acquittal).[48]

805 443 782 (Blanco: note i) Regarding the abovementioned beginning (i.e. on Tuesdays), it is ended at the hour of the 'isha (i.e. at the dinner hour or hour of the sunset prayer). Amen.

805 000 On the sixth day of Ramadan the Magnificent of the year 1335 (June 26, 1917). Servant of his God, may He be exalted, Muhammad al-Ghalbzuri, may God be benevolent toward him, amen. (Signature). Servant of his God, "Abd as-Salam bin al-Hajj Muhammadi al-Ghalbzuri, may God be benevolent toward him. (Signature).

671 692 693 000 Legalization by the qadi. Praise be to the One God. (Both 'udul) have put down its contents, which are accepted and to which I give faith. Servant of his God, Muhammad bin 'Umar at-Tuzani, may God be benevolent toward him, amen. (Signature).

B) Commentary:

671 This qanun manifests in a clear way how social law is made among Rifians: where the legislators gathered to agree on it, how it was made public, whom it obligated, the jurisdiction in which it was exercised, the objective sought and the means of attaining it.

It enumerates the crimes and their sanctions, it distinguishes perpetrators and accomplices, provokers and auxiliaries, natives and stranger. It eschews pardon, it demands proof and it shows the reality of the social unit, the "fraction" (author's italics--the translator

A [See p.306-- Analyst]

671 component lineage groups, for the practices of such groups tend to
614 disintegrate them through the violent opposition of the individual
613 interests of their members. The clan officiates as a soothing in-
182 fluence on the disorderly appetites of the lineages, patrilineally and patrilaterally united by the strong tie of blood.[51]

671 7. QANUN OF THE AITH 'ADHIYA[52] (AITH WARYAGHAR)

693 A) Qanun:

695 Copy.--Praise be to God. In the presence of both the under-
623 signed notaries, all those of Bani 'Adhiya (properly, Bani 'Aziya)
621 made testimony, both adults and minors (author's italics) who consti-
782 tute the jama'as of the Ait Tazurakht, Ait ar-Rabda, Ait Kharbush, Ait Mnudh, Ait Ajdir, Ait (illegible)[53], Ait Ighmiren and Ait Fars, that they, when they went together to the tomb of the saint Sidi al-Hajj 'Umar, in ar-Rabda, sacrificed two bulls as an offering to him[54], (on the occasion of which) an act of reconciliation took place between them, with respect to murder, theft, pillage and other acts of this
682 kind. In case any of them should kill another, then all the above-
613 mentioned villages of the Bani 'Adhiya shall unite against him and burn his estate and that of his brothers (i.e. agnates); they shall drag them from their houses and exact from them a fine of 1000 duros.
682 This (shall be the case) if he should have killed outside the market[55]
443 or without witnesses (literally, "without a meeting"). In case he should kill someone in the market or in front of witnesses, then the procedure shall be as stated above, all uniting against him, burning his estate and that of his brothers (i.e. agnates), and taking from them, as a punishment against him, a fine of 2000 duros.[56]

685 In the same way, they agreed to impose fines for all damages or injuries which are caused, such as theft, etc.

Whoever should steal a sheep or a goat shall be fined 10 duros, and whoever should steal barley, broad beans, etc., from someone else's land shall be fined 5 duros.

681 In summation, all injuries or damages caused by one of them (the Bani 'Adhiya) against another (of them), a fine shall be levied from him, whoever (the party guilty) of the injury or damage may be.

671 In accordance with the above, their declarations were put down, as they have been expressed and explained. Valid and complete testimony. The parties who took part in the present agreement know [693] the value of this agreement, and because of this, both the undersigned notaries testify to what is set down and to the fact that they (the Bani 'Adhiya) are in a perfect state of legal capacity (of sound minds and memories) and that they are known (personally) to them (the notaries).

805 On the second day of the divine month of Jumad ath-Thani of the 600 year 1332 (April 28, 1914). Servant of his God, may He be glorified, 'Abd as-Salam bin 'Abdallah at-Tafrasti, may God be benevolent toward him. Servant of his God, Muhammad bin 'Aisa at-Taxurakhti, may God be benevolent toward him.

B) Commentary:

671 This synthetic qanun of the Aith 'Adhiya, drawn up in conformity with the dictates of the purest tradition, contains within it suggestions analogous to the rest of the documents which we have studied.

[771] It is a pact (author's italics), by which those who have agreed on it must in future regulate their coexistence and traditional

000 knows how to listen to, attentively and curiously, with a composure, artfulness and incomprehension which is charming, so that he may interpret it later on according to his whim, and with such freedom that no one could recognize it if there were anyone in this happy land to whom the idea of losing time through research might occ-

The memory of Rifians is of a shocking fragility for whatever does not interest them or is lacking in precise outline.....

693 671 212 How many disputes and fights the talib-editor might have avoided if he had had the least idea of the transcendence of his writing and of his notarial function, and if he had listed, instead of his dull litany of names, that by which "they established a qanun for all in general", from which he shows no more than four examples (author's italics), and these very entangled!

693 212 Undoubtedly the first man to be convinced of his uselessness and transitoriness as a legal recorder was the neglected talib-editor himself. He would not judge it opportune to bother about this, knowing the slight value which Rifian society attached to proof written down by the cunning tulba, to whom it only apportioned snares and delusions. Perhaps intentionally in order to convert himself into the sacred repository of all the juridical sciences of the Aith Khattab, a pre-eminent post, he saw himself as an obligatory consultant for all the disputes among his forgetful constituents, for these would require his testimony and assure him of a certain measure of preponderance, especially sacerdotally, aside from an obligatory invitation to a final meal. All conjectures fit, from that of ignorance to that of gluttony. What is certain and unpardonable is that this voluntary omission deprives us today of tasting the needs which they felt and the form in which they sought to remedy them. -322-

671 554 Abundant in these ideas, we may observe how in the first lines of the qanun some names are adorned with the honorific titles of shaikh and even qa'id, titles which fit the members of this society as well as two pistols do a saint, for not only did they not realize nor did anyone admit the roles which in Arabic correspond to such titles, but, as can be appreciated, the nominal qa'id (i.e. Sayyid Bu Bakr bin Muhammad Ushshan) does not occupy the first place, which he not only had to yield to the opulent and considerable Shaikh Muhammad Shiddi, but to crouch behind another, second shaikh, 'Ali Azarqan, and we finally discover him in third place modestly lost among the notables: the adults (author's italics), with this single, authentic and legitimate representation: that of his lineage (family group) or dharfiqth, and all the rest, of the social group or jma'th.

It may be observed that this is the only qanun in which the imaginary personage of the qa'id is expressly stated; his title and role are as unreal as all other Arab ones in the Rif, whether they be called bu mwarith, ukil l-ghuyab, shiyukh, mqaddimin and even qudat 181 (pl. of qadi). These people did not look toward Fez nor toward the circumference of the Rif, but toward its center, toward the interior, 614 toward their villages. There was no power other than the assembly, 121 the agraw, the council of elders. For this reason Rifian society.... could have previously been considered concentric.[76]

671 554 693 We may also see the coincidence that this qanun, the only one in which the term qa'id appears, is also the only one which contains that of amghar among the last names (ninth to last) as well as that of ra'is[77], and it reveals to us how the tulba of the Aith Waryaghar, who

671 surprised Raisuli so much later on[78] when he saw their warlike pro-
554 clivities, were employed in an executive capacity so far from their
693 real profession.

671 If we consider the time in which they were drawn up, quite
779 recently, this would show us these apparent confusions as a more advanced state of Islamization.

671 Going further in the reading of the qanun, we notice a confused editorship or translation in the examples which it gives us. We do not know if we are commenting on a qanun, the Rifian penal code, 671 or a shooting match. Why is it that if a man wounds someone in attack, 683 he must pay a fine of 100 duros, and if he misses him, he must pay double that amount? Because of his poor markmanship? But then instead of limiting aggressions, of tending to diminish damages and injuries to the individual and to society, were the Rifians thus impelled to aggravate them with this exhortation to perfect markmanship, a stimulus to murder? Undoubtedly there is much confusion here, and I myself am not certain how to explain it.

681 Common prestige and experience arm them and cause them all
443 to watch over and keep their guard against each other, stipulating the severest punishment, above their own individual interests, for those who attack in the market. They consider this a crime against the
[619] tribe, the worst crime in Rifian society, which is paid with violent
[673] death, without admission of the compensation which another qanun of the Aith Waryaghar[79] mentions, although this does not do so.

671 This qanun also shows us a very curious aspect of Berber society, in general and of Rifian society in particular, as we have commented above.

675
578 through allegation, no litigation related to the water cited above. If any of them should demand the continuation of the debate through the presentation of proofs or arguments, everything would be null and void, for neither the present nor the future provides for this. Both parties have renounced all arguments, both public or private, which they could allege, as well as all the successive declarations (or reclamations) which could be brought forth to impede putting this agreement into effect.

600 A valid and executive arrangement. Both parties attending know the value of the present act, and, by virtue of it, the undersigned notaries, who know them to be in a perfect state of legal capacity (who know them to be of sound mind and memory), make their testimony. On 28 Qa'da al-Haram of the year 1250 (March 28, 1835).

A signature follows, illegible and signed. Another illegible signature follows the first.

Legalization by the qadi: Praise be to God.--I give faith (or testimony) to the above after both 'udul (notaries) have done so.--Servant of his God.--Signature (of qadi) illegible.

18. A SHAHADA ON WATERS: TRANSLATION:

695
312 Praise be to God.

[693] Both the undersigned notaries compile the testimonies presented by the respected 'Abd al-Qadir bin 'Umar al-'Alawi, the honorable 'Umar bin 'Ali, the respected Talib 'Isa Ajtuh, and the honorable Muhammad al-'Arusi, all of the Bani Waryaghal, in which they testify (the testimony of God is the perfect one) that the water ditch, (the property) of 'Abdallah bin Ahmad Amhawil al-Khattabi al-Waryaghli[175]

695 is to be found situated above the ditch of 'Umar bin Yusif al-Waryaghli.
312
[693] This is what the witnesses of the present (act) certify without there being (any) doubt existing in it. A complete attestation.

693 The undersigned notaries who have compiled (the testimonies which
695 these individuals afforded) from them testify that the latter are in a perfect state of legal capacity (i.e. of sound mind and memory) to testify, and they know them (i.e. personally).

[805] On the 21st day of the blessed Sha'ban of the year 1150 (December 13, 1737). Two illegible signatures follow.

19. PURCHASE AND SALE OF AN IRRIGATION TURN: TRANSLATION:

Praise be to the one God.

312 The Qa'id Sulaiman bin Muhammad al-Waryaghli al-Khattabi al-Ajdiri[176]
571
432 buys, with the power and force of God, from the one who sells it, Siddiq bin Muhammad bin Siddiq al-'Abdallawi[177], one-fourth (of a part) of the irrigation ditch of Bulma'iz, (in his turn) by day or by night, his turn reappearing about (once) every nine days; on some occasions
432 he gets it during the day, and on others at night. A valid, definitive
[435] and firm purchase, so much down, without conditions of resale or op-
[436] tions (to anything) other than that assigned here), for a price the sum of which is 100 duros, in Spanish money (i.e. 500 pesetas). This amount the abovementioned seller has taken from the abovementioned buyer, thus recognizing it in front of both witnesses instrumental to the present act, freeing the buyer from it, who took over his purchase with complete possession, occupying it in his place of ownership in conformity with the traditional law and the right of rehibitory action